

Equal Time

Number 64 June 2005

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The contents of this publication are for information purposes only and should not be substituted for legal advice.

DRESS CODES

Employers are entitled to insist that their employees dress appropriately. They may even have a dress code. But does it cover everything?

Refer to our story on page 6 for more information

Amendments Launched

As part of Law Week, the Amendments to the Anti-Discrimination Act were officially launched by the Attorney General, Bob Debus on 18 May at Parliament House.

The much anticipated amendments to the Anti-Discrimination Act 1977 (NSW) (ADA) were passed by Parliament on 26 October 2004 and commenced on 2 May 2005. The changes mainly cover the Board's processes and the way we deal with complaints, streamlining the complaints process in a number of important ways. The changes have been covered in previous issues of *Equal Time* and more information is available on the Board's website.

The launch was also an opportunity to promote some recent Anti-Discrimination Board initiatives:

- a new series of posters (see page 3; and,
- an electronic slide show version of the Board's highly successful publication *Unfair Treatment... What to do*. The original booklet publication was a highly commended resource for people with intellectual disabilities and their advocates and carers.

The new electronic version of *Unfair Treatment... What to do* provides an additional means to communicate the main concepts in a strikingly visual way. It is designed primarily for advocates and carers to educate their clients about harassment, unfair treatment and how to deal with these problems. The version can be viewed as an automatic slideshow or an advocate or carer can navigate through the resource to tell a particular story or show just short segments.



Tory McGuire, ADB Conciliation Officer with Attorney General Bob Debus at the launch.

From the President

In this issue of Equal Time we features articles on recent initiatives and staffing appointments to the ADB's Education Services Branch. The branch coordinated the recent successful launch by the Attorney General of the amendments to the Anti-Discrimination Act (see page 4) and has published a new poster series to promote people's awareness of their rights and obligations under anti-discrimination law. (see page 3).

Recent staffing appointments in Education Services (see page 12) will help strengthen the branch's ability to meet its challenging role of increasing public awareness of anti-discrimination law and the role and function the ADB. The branch is developing new training programs and learning products including e-learning and multimedia applications. Initiatives to increase awareness of the Board's role and use of its services in regional Australia are also planned.

Once again this issue of Equal Time



includes summaries of recent successful conciliations by our Enquiries and Conciliation Branch (see page 10) demonstrating the Branch's positive role in dealing with discriminatory attitudes and practices in the broader community.

Employers are entitled to impose an appropriate dress code on their employees. But what is appropriate and what can dress codes cover? These issues are explored in an interesting article on page 6.

Stepan Kerkyasharian AM

Anti-Discrimination Board — Statutory Board Members

The members of the Board are the President as Chair, Stepan Kerkyasharian, and four part-time statutory members appointed by the Governor of NSW. The Board's part-time members are Ms Suzanne Jamieson, Ms Phillipa McDermott, Mr Cameron Murphy and Peter Wertheim.

17TH WOMEN, MANAGEMENT & EMPLOYMENT RELATIONS CONFERENCE

The Labour-Management Studies Foundation (LMSF), jointly hosted by Macquarie Graduate School of Management and the Division of Economic and Financial Studies, presents the 17th Women, Management & Employment Relations Conference.

EEO: FUTURE DIRECTIONS? • LEADERSHIP • WOMEN AND SUPER • MENTORING

21-22 July 2005
Hotel InterContinental
Corner Philip & Bridge Streets, Sydney

Registrations Close
The closing date for registrations is 14 July 2005. Late registrations will be considered, depending on the availability of places.

Registration Fee
The program fee is \$1,975.00 (inc. \$197.50 GST), which includes conference materials, presentation, catering and Conference dinner on 21 July 2005.

Further Information
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New workplace posters

The Anti-Discrimination Board has launched a new range of workplace and community posters. The new posters feature an array of colours and designs to ‘catch the eye’ and promote the rights of people in NSW. For employers, the posters are a colourful and stimulating way to remind employees of their rights and responsibilities.

The posters promote people’s awareness of their rights and obligations under anti-discrimination law. Displaying the posters in your organisation will help reinforce the message that your organisation does not tolerate discrimination or harassment.

There are six A3 size posters in the series.

Three of the posters are designed to be used in workplaces and include space to add contact details for your organisation. They are titled:

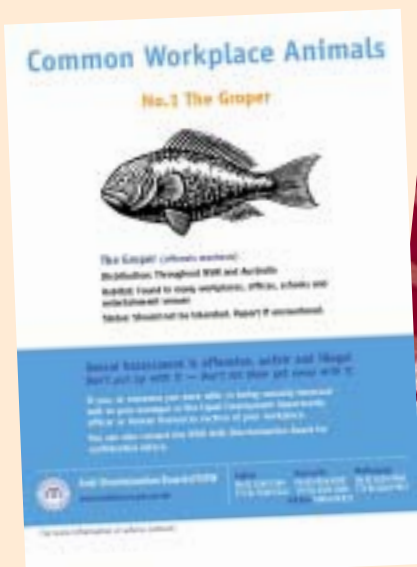
- Stop harassment and bullying
- Diversity makes the difference
- Common Workplace Animals – No.1 The Groper

There are three other general posters, including one multilingual poster, which can be used in community organisations as well as workplaces. They are titled:

- That’s not fair!
- Stop hassling me!
- Say no to discrimination (multilingual)

The multilingual poster is in 13 languages (including English). The languages are: Arabic, Chinese, Croatian, English, Greek, Khmer, Italian, Korean, Macedonian, Serbian, Spanish, Turkish and Vietnamese.

Visual tools can be very effective in promoting the principles of respect, equity and fairness and we encourage you to purchase and display the posters in highly visible locations. To place an order please refer to the order form which is available in this issue of Equal Time and on our website.



ADB launches amendments and education initiatives

Speech by the Hon Bob Debus at the launch of amendments to the Anti-Discrimination Act

I would like to extend a warm welcome to all of you here today to mark the commencement of the Anti-Discrimination Amendment (Miscellaneous Provisions) Act 2004, which began operation on 2 May.

Since its introduction in 1977 the Anti Discrimination Act has continued to provide important protection for members of our community from prejudice and discrimination in key areas of life, such as employment, education, the provision of goods and services and accommodation.

In a time when the media and talkback radio can be cast into convulsions for days on end over the wish of a 17 year old schoolgirl to assume a particular form of ethnic dress, it is clearly still the case that the ADB offers invaluable protections.

There can be no doubt that the Anti-Discrimination Board has brought about positive change and work to tackle discriminatory attitudes and practices in the broader community.

The Anti-Discrimination (Miscellaneous Provisions) Amendment Act was formulated to try to update the Act, to bring about improvements to the way in which complaints are lodged and dealt with and to give the Board and its staff clearer powers.

The Act addresses around 60 of the Law Reform Commission's

recommendations for reform in this area. There is of course still more to do and I hope to bring some of those remaining, very important recommendations to finality in consultation with the Board.

Without going into great detail about the amendments which have been passed, it is fair to say that their major goals are :

- **First, to improve access to the Board and its processes** The Act for the first time allows assistance in the preparation of complaints, which is particularly important for people with disabilities who may not be in a position to physically prepare a complaint on their own behalf. The time for the lodgement of complaints to the Board has also been increased from six to twelve months;
- **Second, to clarify the powers of the President and the Board:** Various amendments give the President of the Board far more flexibility in dealing with complaints – for example, he can now decide to accept or decline parts of complaints and has the ability to deem old complaints abandoned. These provisions will enhance the Board's case handling processes. A further amendment brings greater accountability to complaint handling processes by requiring the Board to keep parties informed of progress every 90 days;
- **Third, to strengthen the powers of the Administrative Decisions Tribunal:** The Act strengthens

the ADT's powers by enabling it to make orders which extend to conduct of the respondent that affects persons other than the person who lodged the complaint. This will allow the Tribunal to address identified situations of systemic discrimination. The ADT is also provided with new powers to order respondents to publish an apology or a retraction, and provides for the enforcement of non-monetary orders of the Tribunal as a judgment of the Supreme Court once the Registrar of the Tribunal has filed a certificate outlining the terms of the order.

It may be heresy for a member of parliament to say so, but legislation is only ever a tiny part of bringing about change. That is why I am so enthusiastic about the work undertaken by the Board in community education which I see as a crucial factor in changing community attitudes. The Board has recently released a new series of workplace posters designed to give real and concrete information to people at risk of discrimination and harassment; and to educate employers and their staff about ways to achieve effective solutions in the workplace. A number of these posters are up in the Parliament House foyer and I commend them to you.

The Board has also produced an electronic version of its Intellectual Disability Rights booklet to assist advocates to educate their clients about their rights under the law.

Earlier I mentioned that a number of the amendments in the new legislation were aimed at improving the Board's complaints handling functions.

In conjunction with a number of new processes introduced by the Board over the last 18 months, the amendments are already having an effect – the Board tells me that the new processes are working effectively, and complaints are being handled more quickly. Already there is a reduction in waiting time and earlier resolution of matters. The backlog of complaints has been dealt with.

The Anti-Discrimination Act and the Board are important institutions in NSW – they stand as a testament to our commitment to a fair and just society.

The amendments which have recently come into force reflect our determination to support the Board and its important work, and to ensure that the anti-discrimination processes in this State are efficient, timely and sufficiently robust to meet the challenges that we still face today.

Photos (left to right from top)

1. Ibtisam Hammoud Al-Zahra (Muslim Womens Association), with Wahida Rickman (Department of Education and Training) and Sana Asmar (Islamic Council of NSW).

2. Laurie Glanfield, Director General of the Attorney General's Department, with Liz Wing and Fiona Kerr from the Anti-Discrimination Board.

3. Peter Cassar (People with Disabilities), Samantha French (People with Disabilities), Roy McAlpine (People with Disabilities), David Urquhart (Access Plus) and Heidi Forrest (People with Disabilities)

4. Mark Wenberg and Heather Stafa (Norimbah Unit AGD), Nathan Tyson (Anti-Discrimination Board) and Andrew Windever (Attorney General's Department)



Dressed for success?

Employers are entitled to insist that their employees dress appropriately. They may even have a dress code. But does it cover everything?

Can you ban singlets for men but not women?

Base-ball hats but not turbans?

T-shirts may be fine, but what if someone has an anti-religious slogan printed on theirs?

What is "smart casual"? A new tracksuit in company colours?

What if older women complain about a young female's mini skirt? And the guys won't stop ogling?

Anti-discrimination laws can help with some of these dilemmas.

The NSW Anti-discrimination Act, 1977, deals with discrimination on the grounds of sex (including pregnancy) and marital status, race, age, disability, homosexuality, transgender or carer's responsibilities. "Discrimination" is treating a person less favourably than others in the same or similar circumstances, on the basis of one of these grounds.

It is also unlawful to expect someone to comply with something that is unreasonable, with which they cannot comply, and with which a substantially higher proportion of people of the same age, race, gender, etc., is unable to comply. This is indirect discrimination.

Sikhs who were refused entry to an RSL club because their turbans were deemed contrary to the dress

code requiring men to remove their hats upon entry to the club were victims of indirect discrimination. The manner in which the requirement was interpreted in this case was unreasonable.

Ties

The English Employment Tribunal¹ considered whether a new dress code requiring men to wear a shirt and tie was sex discrimination. The new code stated that women should dress appropriately and to a similar standard. They could wear T-shirts, provided they were neat and tasteful but men could not.

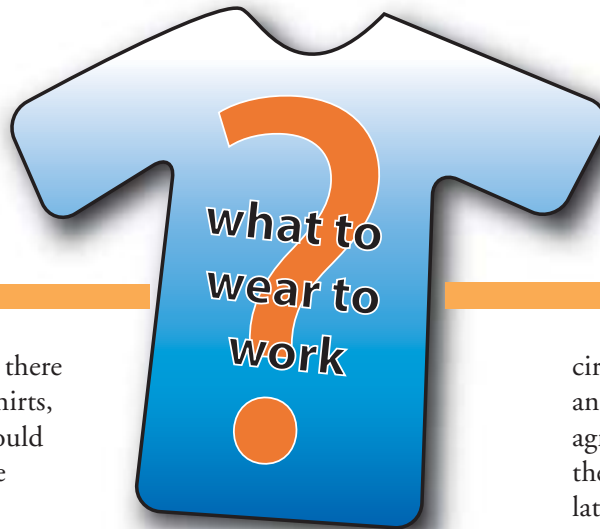
Most employees accepted these requirements. Forty men, however, including the applicant, objected.

The applicant was an administrative assistant who had no contact with the public and he didn't wear a shirt and tie. He was warned that he would be disciplined if he didn't

comply. After a formal warning, he complied, under protest, and started legal action. He said that he did not want to be treated differently from a woman and did not want to wear a tie.

The tribunal had to ask itself if the applicant was subjected to any detriment and whether he would have been treated more favourably, "but for" his sex. It had to look at the "overall situation". This included the fact that there are conventional differences in dress between men and women which society expects.

It said that employers must be able to enforce a dress code to achieve their corporate image goals. They can also, if they wish, have different codes for "front-line" and "back room" staff. It said, however, that in this case, the way in which the dress standard was implemented imposed a higher standard of dress on men. There were no items of clothing



that women had to wear and there were some items, such as T-shirts, that women, but not men, could wear. This was less favourable treatment of the men.

The tribunal said that the applicant suffered detriment: his freedom of expression was fettered; he had a sense of injustice as a result of the treatment; and, unlike the women, he had to change his dress habits. Working in the back room, what he wore did not impact on the employer's corporate image.

The tribunal decided that he had been discriminated on the ground of sex.

Body Piercing

A male service station attendant was sacked because he wore an earring, contrary to the grooming policy. Women working at the garage were allowed to wear earrings. The tribunal² accepted that this was sex discrimination.

This case doesn't, however, mean that all employees, even women, can have body piercings. It depends on the circumstances and every case is judged on its own facts. A female casino worker's dismissal was upheld when she refused to remove a tongue stud. The Industrial Relations Commission³ determined that the casino wanted to maintain a "five star" image and that body piercings were inconsistent with this.

In a recent case, a butcher doing casual work for a large chain of department stores was sacked for

wearing an eyebrow ring, contrary to the company's dress code. He had obtained regular work at one branch where the manager allowed him to cover the eyebrow ring with a blue, "company approved", bandaid.

He was later told, however, that this was unacceptable because the bandaid or the ring might fall off into food. He brought a legal claim for unfair dismissal.

He was reinstated by the Australian Industrial Relations Commission⁴. The commissioner said that while the bandaid never had fallen off, and the eyebrow ring was actually quite difficult to remove, the problem could have been rectified by his wearing a hair net.

Obviously, a bit of commonsense and a degree of flexibility in the implementation of dress codes is called for. It should be noted, however, that the company in this case has appealed the decision.

Less favourable treatment.

A dress code is only discriminatory if it results in someone receiving less favourable treatment than others in the same circumstances because of their sex, race, age or other ground covered by anti-discrimination laws.

If the dress code is reasonable in the

circumstances of the particular job, and particularly if the employee agreed to it when they took the job, they are unlikely to succeed if they later claim it is discriminatory.

This was the issue in a recent case involving a dress code requiring female gaming room attendants to wear mini skirts. The applicant initially agreed to wear short skirts but later claimed that this requirement amounted to sex discrimination. She also accused her supervisor of other sexually harassing behaviours.

The Federal Magistrate⁵ rejected her claims, saying that it was relevant that she was happy to wear mini-skirts in her private life and she had posed in a bikini for a men's magazine.

Not everyone would agree with the decision in this particular case, but it does demonstrate that anyone who claims that a dress code is discriminatory has the burden of proving, on the balance of probabilities, that they have been disadvantaged, or discriminated against, by the requirements of the code.

Footnotes

¹ Thompson v Department of Work and Pensions, Employment Tribunal, case number 2405602/02.

² Bree v Lupeno Pty Ltd & ors [2003], NSWADT 47, 11/3/03

³ Fairburn v Star City Casino PR931632 (May, 2003)

⁴ Cameron Brown v Woolworths Limited trading as Safeway. PR958576 (6 June, 2005)

⁵ Zhang v Kanellos & Anor [2005] FMCA 111 (11 March, 2005)

Legal developments

Butcher sexually harasses female salesperson

The Victorian Civil and Administrative Tribunal has awarded a female salesperson \$8,000 in damages ruling that she was sexually harassed and that the harassment aggravated her previous medical conditions.

The Tribunal heard that two male co-workers walked around the shop with pieces of meat hanging from their pants. They would also overemphasise words such as breasts and racks when discussing cuts of meat. One of the butcher talked about opening a brothel and once, within earshot of the salesperson, told a workmate: "It's such a beautiful day. I'd really like to be in a spa with a beer in one hand and a **** in the other". The butcher did not dispute that he made this statement except that he maintained he said "bourbon", not "beer"

The salesperson made regular complaints about her co-workers' sexist remarks, at one point leading to the butcher receiving a verbal warning. The tribunal stated that the employer's harassment policy was inadequate and poorly implemented.

Deputy President McKenzie also found the part-time employee was not retrenched by Murray Meats Pty Ltd because she was a woman as she had alleged.

She was retrenched on the same day her employer was dealing with another claim before the Equal Opportunity Commission.

Deputy President McKenzie inferred that the employer was concerned that the salesperson might also lodge a complaint and this was a substantial reason for her termination. However she was not satisfied that a man would have been treated any differently.

Styles v Murray Meats Pty Ltd [2005] VCAT 914 (12 May 2005)

Casual worker succeeds in disability claim

The Victorian Civil and Administrative Tribunal has found that a casual worker was discriminated against after his employer discovered he had previously lodged a Workcover claim.

The company was ordered to pay \$12,500 with VCAT finding the employer discriminated against the casual worker on the grounds of impairment after it had stopped offering work to him.

The man had been working casually for the company when he went for an interview for a fulltime position. He was unsuccessful, then found his casual work petered out.

He alleged that in the interview, he'd told the panel he had a preexisting injury. The Tribunal made no finding on that point. However it accepted evidence from an AMWU official that the HR manager had told inadvertently told her that the man had been put off because he had a previous WorkCover claim.

The Tribunal concluded that the substantial reason the Complainant's name was removed

from the list of casual employees was because of his previous WorkCover claim.

Because of the discriminatory behaviour by the HR manager, VCAT ruled that PrixCar was vicariously liable and ordered \$7,500 compensation for lost wages, and \$5,000 for pain and suffering.

Ronald Lester Dekretser and PrixCar Services Pty Ltd [2005] VCAT 738 [22 April 2005]

Family responsibilities unlawful dismissal claim upheld

The AIRC has ordered an employer – who made a worker redundant because of her family responsibilities – pay the employee \$5,664 in compensation.

After returning from maternity leave, the employee informed Powerlab that her mother had been diagnosed with terminal cancer. She returned to work but, due to a deterioration in her mother's health, had to take unpaid leave.

Two months later the employee requested part-time work but did not get a response for another two months when the request was declined. Several months later she was made redundant.

The employer of seven argued that it wanted to cut administration staff numbers and to employ more tertiary-educated accounts workers.

The Commission found the employee was selected for redundancy over other employees because of her family responsibilities.

The employer's argument that its small size reduced its ability to comply with procedural fairness requirements was rejected.

Commissioner Hingley said the employer should have met with the

employee to discuss the impact of the proposed restructure on her future.

Katia Georgiadis v Powerlab Pty Ltd. PR956774 (7 April 2005)

WA mineworker maternity leave decision upheld

The decision that a female mineworker was treated unfairly when she returned from maternity leave has been upheld by the full bench of the WA Industrial Relations Commission after a jurisdictional challenge.

The mining company had written to the woman early in her maternity leave and told her that she would return to the position of underground geotechnician. However, her position was subsequently made redundant and she was not advised of this until she was ready to return to work.

The company offered her other positions that effectively represented a significant lowering of her salary. The original decision said that an “equivalent position” must be of the same value, whether it was paid by the same hourly rate or not. A remedy has not yet been decided.

Ivy Bilos v Aurion Gold [2004] WAIRC 13463

Male apprentice sexually harassed and bullied

The NSW Administrative Decisions Tribunal awarded a 16 year old apprentice electrician damages for sexual harassment after hearing that his supervisor had touched the male apprentice on the scrotum and repeatedly asked him to “give him head”.

The Tribunal’s full bench said the supervisor’s conduct was unwelcome, and accepted that the apprentice had complained and had lashed out and kicked the supervisor when touched on the scrotum.

The apprentice was also deliberately burnt on the neck with

a cigarette lighter and had a cigarette stubbed out on his arm.

The tribunal also found that the supervisor called him names such as ‘homosexual’, and ‘ball licker’ and that this amounted to conduct of a sexual nature within the terms of the provisions of section 22A(b) of the NSW Anti-Discrimination Act.

The apprentice resigned two months after he started employment when the supervisor allegedly threw a lit cigarette into his eye.

The harassment by the supervisor led to the apprentice becoming depressed and developing a post traumatic stress disorder.

The bench ordered the supervisor to pay the former apprentice \$10,000 in general damages and \$5,286 in special damages. The employee settled his claim against his former employer prior to hearing.

Gabryelczyk v Hundt [2005] NSWADT 94 (3 May 2005)

Worker with psychiatric disability reinstated

The AIRC has ordered a dairy food company in Victoria to reinstate a worker it dismissed following his first episode of schizophrenia.

Commissioner Mansfield found that because of the machine operator’s mental illness at the time, he was not in control of the actions that led to his dismissal and therefore there was no valid reason for terminating his employment.

Medical evidence showed he was now fit to return to work.

Murray Goulburn Cooperative (MGC) fired the man after he left work during his rostered shift without notifying his supervisor. Eight days later he was found in the workplace at 3am with a cigarette and beer both of which are banned at the factory. He had also left a can of beer in a fridge in the butter room and gone into a hygienic area of the factory without regulation clothing.

Following that incident he was involved in a robbery of an empty cash bag and two packets of cigarettes from a supermarket. As a result he received a community-based order and his family sought psychiatric help. He was diagnosed with schizophrenia and received treatment.

He was advised by MGC in July that he was stood-down without pay. Three months later he advised MGC that his health had improved and he wanted to return to work.

However, following a meeting with senior management he was informed that he was dismissed. MGC was aware he’d been diagnosed with a mental condition and had received treatment.

MGC maintained that consumer confidence could be affected by any breach of its hygiene standards. It believed it had to impose a high level of responsibility on employees for any failure to observe its standards.

Commissioner Mansfield ruled that due to the man’s mental illness at the time, he was not in control of the actions that led to his dismissal, and on that basis his sacking was harsh, unjust and unreasonable.

He concluded the medical evidence clearly indicated the worker’s ability to return to his former job, and that there were no special requirements that needed to be considered by his employer.

MGC was ordered to pay the man’s lost wages from December, which was when he was out of hospital and had finished his community service. It was left open whether the reinstatement be to his former position, or to an acceptable alternative position.

Steven Berry v Murray Goulburn Co-operative Limited. PR957500 (21 April 2005)



Conciliations

Disability discrimination in education

The Board received two complaints of disability discrimination against the same education provider, both from people who were hearing impaired.

In the first case, the institution provided an interpreter for the complainant but this interpreter only signed in English and the complainant preferred to use Auslan. The complainant dropped out of the course.

This complaint was resolved when the education provider agreed to acknowledge Auslan as the primary language of adult deaf people, to provide an Auslan interpreter where possible for exams and assessments, and to provide other services or considerations as required.

In the second case, the complainant said he was told by a staff member that he was taking on too big a load when he wanted to undertake a full time course plus one additional subject from another course. He said he thought it was his right to make this judgement and the staff member was putting him down.

The complaint was resolved when the respondent agreed to provide interpreters throughout the complainant's course, and to let all students know about a local advocacy service which can negotiate with the institution's disability consultant to quickly resolve problems of the type the complainant experienced.

Disability discrimination in registered clubs

The complainant is a below-the-knee amputee and wears a prosthesis. She alleged that a club of which she was a member discriminated against her on the ground of disability when it refused to provide her with further alcoholic drinks.

She alleged that an officer of the club assumed she was drunk after he observed that she seemed to be unsteady on her feet, and told her that she would not be served any more alcohol. She said that she then complained to the club's management about the treatment and told them that she only had one leg, another staff member laughed at her.

The matter was resolved when the club gave a written undertaking to conduct staff training on discrimination issues.

Disability discrimination in goods and service provision

The complainant has a psychiatric disability and attended a service that provided activities and meals. An incident occurred between the complainant and the manager of the centre and the manager alleged that the complainant was abusive. The complainant was banned from the centre except for meals.

The complainant made a complaint of disability discrimination to the Board. He said that the reason his manner may have changed during the incident was because he was hungry and this affected his mental

state because of his disability.

The complaint was resolved after the Board contacted the service and they agreed to allow the complainant to return for a trial period.

Sex and age discrimination in employment

The complainant worked in promotions for an entertainment provider. She alleged that the manager made comments on her age and personal style, and said that "she had a lot to learn". She eventually left the job and felt her confidence had been seriously undermined.

She made a complaint of age and sex discrimination to the Board. The respondent said that he was not discriminating against her, but was only giving her "tips" on how to improve her work.

The complaint was resolved when the company agreed to give the complainant a statement of regret, a statement of employment and a payment of \$2,000.

Sexual harassment in employment.

The complainant worked for a registered club in a full-time clerical position. She alleges that the club's President subjected her to unwelcome conduct of a sexual nature in an incident at work. Allegedly he grabbed her from behind, wrapped his arms around her waist, and kissed her on the back of the neck. She also alleged that this was not the first time that he had subjected her to unwelcome conduct but that on this occasion she felt he had gone too far.

She lodged her complaint against him personally and also against the club. The club President denied the conduct, although admitting to touching the complainant by placing his arms on her shoulders. The complainant did not return to

work following the incident and ultimately resigned.

The matter was resolved when the complainant accepted a payment of \$10,000 in settlement of her complaint.

Disability discrimination in employment – recruitment

The complainant applied for employment with a recruitment agency for the position of trainee recruiter. She alleges that after attending a number of interviews and being given the impression that she had been successful in her application, she was advised that she was unsuccessful. According to the complainant when she sought a reason for this she was advised that one of her referees had mentioned a stress related illness. The respondent denied that this was said to the complainant, but asserted that it was because the complainant lacked sufficient sales experience and appeared to have a low stress tolerance.

The respondent asserted that it was unaware that the complainant had any stress related illness and denied that the complainant's referee had disclosed this. The respondent asserted that it was their testing of the complainant that had indicated low stress tolerance and that the position was essentially a high-pressure sales position.

The matter was resolved when the complainant accepted a payment equivalent to the expenses she incurred in applying for the position.

Disability discrimination in employment – termination

The complainant was employed under the Electronic & Communications Contracting State Award. The exact position held by the complainant was in dispute. The complainant had sustained a number of electric shocks during

his employment and asserted that the last electrocution had caused him to suffer from depression and acute anxiety. He was initially provided with some alternative duties but was later placed on worker's compensation payments as the respondent asserted that there were no suitable duties available to him.

The respondent ultimately terminated the complainant's employment on the basis that he could no longer perform the work he was employed to do. The complainant asserted that the employer had not made any genuine attempts to rehabilitate him and asserted that he could have returned to his position at some point in the future. The respondent asserted that it had complied with its requirements under Workcover legislation. However, the respondent also indicated that it had not turned its mind as to whether any services and facilities could have been provided to the complainant to enable him to perform the inherent requirements of the job.

The complainant accepted a

payment of \$4,750 in settlement of his complaint.

Carer's responsibilities discrimination in employment.

The complainant was employed by the respondent in an administrative position. She made a number of written requests to her employer to return to work on a part-time basis after the birth of her child. She alleged that despite making these requests over a period of more than eight months, her employer put off making a decision until eventually advising her that she would be required to work on a full-time basis. The complainant resigned upon receipt of this written advice and lodged a complaint with the Board.

Following her resignation her employer recanted its decision and offered her part-time work. The complainant advised that she did not feel she could go back to work for the respondent and that she had obtained part-time work elsewhere. The complainant accepted a payment of \$5,000 in settlement of her complaint.

Worried that you're not up on the latest developments in discrimination law?

The Anti-Discrimination Board can provide on-site training in your workplace, custom-designed to meet your individual needs.

For more information contact: Murray Burke on (02)9268 5519

Education Services Staff Appointments

New Senior Education Officers appointed

Sharmalee Elkerbout

Sharmalee Elkerbout has joined the ADB as a Senior Education Officer in our Sydney office.

For the past twelve years Sharmalee has worked as a trainer, a teacher and in various other roles across diverse organisations within the corporate and public sectors both in Australia and in the Netherlands. Before moving to Sydney, she had been a middle manager with Rotterdam Council for five years. Since moving to Australia she worked for NSW Police for four years attempting to breakdown barriers between culturally and linguistically diverse communities and the Police.

Her academic qualifications (from the Netherlands) include: Management qualifications (MBA program), Masters degree in English Language & Linguistics and three years studying medicine.

Her childhood was spent in Sri Lanka, her teenage years in the Caribbean and her adult life in the Netherlands. Through living/

working in various countries, she has picked up seven languages and gained a good knowledge of various cultures, cross-cultural communication and diversity issues.

At the ADB, she hopes to train both management & staff on policy and procedures to promote harmonious and productive workplaces free from discrimination and harassment.

Rhonda Stewart-Crisanti

Rhonda Stewart-Crisanti has been appointed as one of the Board's Senior Education Officers. She has been acting in the position since February 2005 and has been presenting custom made training programs to employers across a variety of sectors including manufacturing, finance, education, service, health and local government. Rhonda has also delivered training to various organisational levels from CEO, Managers, Team Leaders to employees.

Rhonda has extensive knowledge of

industrial relations issues having worked in both the federal and state jurisdictions in NSW, Queensland and Victoria. She holds a Bachelor of Economics (Sydney University), a Post Graduate Diploma in Industrial Relations (Melbourne University) and an Australian Institute of Management Certificate in Training Small Groups.

New Manager of Education Branch

Murray Burke has been appointed Manager of Education Services. He has worked for the Board for eight years in a number of roles. He worked as a conciliator in the complaints handling section and more recently as a Senior Workplace Relations Consultant.

He is experienced in working with employers from a broad range of sectors. This includes consultancies in the finance, hospitality, manufacturing, community and public sectors. He has extensive knowledge of discrimination and harassment issues, grievance handling and grievance resolution.

Murray has a challenging role in promoting the role of the Anti-Discrimination Board to the people and employers of NSW. He manages the workplace education and community education units, the publications area and the Board's website. He will be guiding the branch in developing new training programs and learning products including e-learning and multi-media applications. He will also be promoting the Board's products and services to regional areas of the state.

Murray holds a Bachelor of Commerce degree majoring in Economics, and a Certificate IV in Workplace Assessment and Training.



The Anti-Discrimination Board of NSW

The Sydney office of the Anti-Discrimination Board of NSW has moved. Please see our new Sydney address below.

What types of discrimination do we deal with?

The NSW Anti-Discrimination Board can only deal with discrimination complaints that are covered by the NSW Anti-Discrimination Act. This means that we can only deal with a discrimination complaint if:

- it is based on any of the grounds listed below *and* happens in one of the areas of public life listed below; or
- it is racial, homosexual, transgender or HIV/AIDS vilification, that is, a public act of incitement to hatred, serious contempt or severe ridicule.

The laws do not allow us to deal with discrimination complaints based on other grounds (eg religion, political conviction), or based on events in your private life.

Grounds

- Sex (including sexual harassment and pregnancy)
- Race (including colour, nationality, descent, and ethno-religious or national origin)
- Marital status
- Homosexuality (male or female, actual or presumed)
- Disability (past, present, future, actual or presumed)
- Age
- Transgender (transsexuality)
- Carers' responsibilities (in employment only)

Areas

- Employment
- Education
- Obtaining goods and services (eg credit, access to public places, entertainment, government or professional services)
- Accommodation
- Registered clubs

Where we are

Sydney

Level 4, 175-183 Castlereagh Street, Sydney NSW 2000
PO Box A2122, Sydney South NSW 1235
ph (02) 9268 5555, fax (02) 9268 5500, TTY (02) 9268 5522
Enquiries/Employers Advisory Service (02) 9268 5544

Wollongong

84 Crown St, Wollongong NSW 2500
PO Box 67, Wollongong East NSW 2520
ph (02) 4224 9960 fax (02) 4224 9961

Newcastle

Level 1, 414 Hunter St
Newcastle West NSW 2302
ph (02) 4926 4300 fax (02) 4926 1376
TTY (02) 4929 1489

Toll free number — 1800 670 812

Website — <http://www.lawlink.nsw.gov.au/adb>

order form



Anti-Discrimination Board of NSW new poster series

workplace posters

workplace posters include space to add contact details for your organisation



stop harassment and bullying

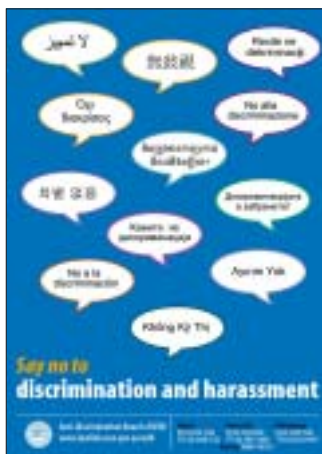


diversity makes the difference



common workplace animals

general posters



say no to discrimination and harassment (multilingual)



that's not fair



stop hassling me

Please turn over for the order form

order form

All posters are A3 size

I would like to order:

- | | | |
|--------------------------|--|----------|
| <input type="checkbox"/> | ___ posters (any combination) @ \$7.00 each + \$5.00 p&h + GST | NPOST |
| <input type="checkbox"/> | 6 posters (any combination) @ \$35.00 + \$5.00 p&h + GST | NPOST6 |
| <input type="checkbox"/> | 12 posters (any combination) @ \$75.00 + \$10.00 p&h + GST | NPOST12 |
| <input type="checkbox"/> | 30 posters (any combination) @ \$185.00 + \$20.00 p&h + GST | NPOST30 |
| <input type="checkbox"/> | 60 posters (any combination) @ \$350.00 + \$20.00 p&h + GST | NPOST60 |
| <input type="checkbox"/> | 120 posters (any combination) @ \$700.00 + \$30.00 p&h + GST | NPOST120 |
| <input type="checkbox"/> | 300 posters (any combination) @ \$1,750.00 + \$40.00 p&h + GST | NPOST300 |

Please indicate how many of each poster you would like:

- | | |
|--------------------------|--|
| <input type="checkbox"/> | 1. stop harassment and bullying |
| <input type="checkbox"/> | 2. diversity makes the difference |
| <input type="checkbox"/> | 3. common workplace animals |
| <input type="checkbox"/> | 4. say no to discrimination (multilingual) |
| <input type="checkbox"/> | 5. that's not fair |
| <input type="checkbox"/> | 6. stop hassling me |

total posters	\$
postage and handling	\$
subtotal	\$
+ 10% GST	\$
TOTAL	\$

I would like to pay by one of the following methods:

- | | | | | | | | |
|--------------------------|---|--------------------------|-------------|--------------------------|------------|--------------------------|------|
| <input type="checkbox"/> | government purchase order | <input type="checkbox"/> | money order | | | | |
| <input type="checkbox"/> | cheque payable to the Anti-Discrimination Board of NSW (enclosed) | | | | | | |
| <input type="checkbox"/> | credit card: | <input type="checkbox"/> | bankcard | <input type="checkbox"/> | mastercard | <input type="checkbox"/> | visa |

card no	_____	expires	_____
name on credit card	_____	signature	_____
name	_____	customer no	_____
position	_____		
organisation	_____		
address	_____	postcode	_____
phone	_____	fax	_____
	_____	email	_____

send your order to: Anti-Discrimination Board of NSW, PO Box A2122, Sydney South NSW 1235
phone (02) 9268 5555 ■ fax (02) 9268 5500